

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CIVIL DIVISION

GARY WRIGHT AND
KAREN WRIGHT,
Plaintiffs

v.

THE UNITED STATES OF AMERICA,
KANSAS CITY VETERANS ADMINISTRATION
MEDICAL CENTER, DR. JAMES A. WOLTER,
And DR. GERALD K. CLAYCOMB,
Defendants.

COMPLAINT

Come now Gary Wright and Karen Wright, for their causes of action against Defendants, The United States of America, Kansas City Veterans Administration Medical Center, Dr. James A. Wolter and Dr. Gerald K. Claycomb, state and allege as follows:

1. This Court has jurisdiction of this action pursuant to the Federal Tort Claims Act, 28 U.S.C. sections 2671, et seq. and 28 U.S.C. section 1346 (b).
2. The prerequisite form 95 was served upon the Department of Veterans Affairs on December 8, 2011 and denied on June 15, 2012.
3. Venue is proper in this Court pursuant to 28 U.S.C. section 1402(b) in that Plaintiffs reside in this district and the act or omission complained of occurred in this district.
4. Plaintiff Gary Wright is a veteran and Purple Heart recipient.

5. Mr. Wright suffered a fall from his tractor in late September, 2010. He suffered immediate cervical pain with pain and numbness to his right arm.
6. Mr. Wright consulted with a private neurosurgeon and underwent two epidural injections in an effort to alleviate his pain. Mr. Wright did not receive any relief.
7. In December, 2010, he sought a neurosurgery consultation with Dr. James A. Wolter at the Kansas City Veterans Administration Medical Center. Dr. Wolter assessed him with a C6-7 disk herniation and recommended anterior cervical discectomy at C6-7. Surgery was performed on January 28, 2011.
8. During the operative procedure, Dr. Wolter reported that he identified the appropriate disk level and began the removal process. During the operative procedure, Dr. Wolter requested intraoperative X-rays to confirm the location for the procedure at the correct site and the X-rays were performed and interpreted by Dr. Gerald Claycomb.
9. Subsequent to the operation, with further imaging studies, it was determined that Dr. Wolter had removed the wrong disk at level C5-6 and Dr. Claycomb failed to properly interpret his own X-rays to confirm the appropriate level for surgery. As a direct and proximate cause of Defendants' combined negligence, Mr. Wright continues to suffer significant cervical pain and now is in a worse condition than before cervical surgery as the rest of his cervical spine is now under more stress and has limited range of movement. Mr. Wright has suffered damages in excess of \$75,000.00.
10. Gary Wright is married to Karen Wright and as a direct and proximate result of Mr. Wright's injuries; Karen Wright has suffered a loss of services and consortium in an amount in excess of \$75,000.00.
11. The United States of America and its employees and/or agents are at fault for the combined negligence resulting in the wrong site surgery and removal of the wrong disk.

12. The United States of America and its employees and/or agents have committed medical battery by removing the wrong disk as Dr. Wolter performed a medical procedure contrary to his representations to Mr. Wright. Further, the consent to surgery which Mr. Wright gave was exceeded and the surgery performed was other than that to which he had consented. Dr. Wolter committed medical battery by intentionally removing a disk at the wrong site and caused Mr. Wright bodily harm.
13. The actions of all employees and/or agents are the responsibility of the United States of America pursuant to 28 U.S.C. section 2674.
14. Upon certification by the attorney general that the Defendant employees and/or agents were acting within the scope of their employment at the time of the incident pursuant to 28 U.S.C. section 2679(d) 1, said individual Defendant employees and/or agents may be dismissed and the United States of America shall remain as the sole responsible party Defendant.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants in excess of \$75,000.00, the costs of this action and such other relief as the Court deems just.

Respectfully submitted,

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